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Weighing Evidence of Flight.—In a prosecution for maiming, defendant was entitled to have the jury pass on his explanation as to why he fled to another county, and it was important that the jury be properly instructed as to the manner in which they should consider and weigh evidence of flight.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 86.]

3. Criminal Law (§ 823 (9)*)—Error in Instruction on Flight as Presumption of Guilt Not Cured by Instruction on Presumption of Innocence.—Error in an instruction that flight raised a presumption of guilt was not cured by an instruction that accused is presumed innocent till proven guilty.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 744.]

Error to Circuit Court, Rappahannock County.

Ray Jenkins was convicted under the maiming statute (Code 1919, § 4402), and he brings error. Reversed.

Grimsley & Miller, of Culpeper, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

LEHIGH PORTLAND CEMENT CO. *v.* VIRGINIA S. S. CO.

March 16, 1922.

[111 S. E. 104.]

1. Judgment (§ 183*)—Bill of Particulars and Notice of Motion for Judgment on Claim for Breach of Shipping Contract Held Sufficient.

—In a steamship company's action for breach of a contract for the shipment of 40,000 barrels of cement, a bill of particulars claiming the balance due for transporting the whole 40,000 barrels, and, without waiving plaintiff's right to rely thereon, giving, in additional items, the loss suffered while the steamship was lying idle waiting for shipments, the salaries paid during such time, the reasonable return on the investment, the approximate loss by diverting the steamship from a different route, the reasonable amount of profits on earnings on the contract, and the pecuniary value of the portion of the contract not performed, held sufficiently full, especially where the notice of motion for judgment contained a detailed statement of the claim.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 380.]

2. Judgment (§ 183*)—Remedy for Insufficient Bill of Particulars Is to Move to Reject Evidence of Matters Not Sufficiently Described.

—If a bill of particulars was insufficient, defendant might have moved to reject any evidence offered by plaintiff touching any matter not

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

described in the notice of its motion for judgment or other pleading so plainly as to give notice of its character.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 382.]

3. Shipping (§ 116*)—Evidence of Damages from Idleness While Waiting for Goods to Be Transported Admissible in Action for Breach of Contract.—In an action for breach of contract for the shipment of 40,000 barrels of cement to be unloaded by the carrier a steamship company, from the cars as they arrived at the shipping point and carried to destination, by failing to furnish the full quantity, where it appeared that after the steamship company was informed that there were still six to ten cars to be shipped, it received only a few shipments during a period of several months, evidence of the damages suffered by reason of the idleness of its boat was admissible.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 392.]

4. Shipping (§ 115*)—Performance of Shipping Contract Not Excused because Contract on Which Cement Was Being Used Was Canceled by Government.—Where a contract for the shipment of 40,000 barrels of cement by steamship was unqualified, nonperformance by the shipper was not excused because the government canceled the contract on which the consignee was using the cement as permitted by its contract with the consignee.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 434.]

5. Shipping (§ 104*)—Jury Authorized to find Company Taking up Contract, Making Payments, etc., Assumed Obligations of Party to Contract.—Where a cement company contracted to ship cement by steamship, and another cement company, acting through its own officers, took up the contract, conducted correspondence in its own name, made payments under the contract at the rates therein stated, and when a claim was made for a breach failed to suggest that the liability was that of the contracting company, the jury was warranted in finding that it had assumed its obligations.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 325.]

6. Shipping (§ 115*)—Government's Cancellation of Contract Held Not Frustration of Adventure Excusing Further Performance of Contract for Transportation of Cement Purchased by Contractor.—Where one selling cement to a government contractor contracted for the transportation of the cement with a steamship company which had no knowledge of the terms of the contract between the government and the contractor, the continuance of the work on the government contract to final completion was not the basis and implied condition on which the liability of the parties to the shipping contract rested, and the government's cancellation of the contract did not cause such impossibility of performance or frustration of adventure as excused further performance.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 431.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Shipping (§ 116*)—Verdict for Breach of Contract for Shipment of Cement Not Excessive.—In a steamship company's action for breach of contract to ship 40,000 barrels of cement, where it saved only about \$307 in fuel and oil by keeping its boat idle while waiting for the cement, and the jury deducted over \$1,100 from the amount of its claim, damages held not excessive.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 202.]

Error to Circuit Court of City of Richmond.

Action by the Virginia Steamship Company against the Lehigh Portland Cement Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Page & Leary, of Richmond, for plaintiff in error.

Frank T. Sutton, Jr., of Richmond, for defendant in error.

GARRETT *v.* RAHILY et al.

March 16, 1922.

[111 S. E. 110.]

Sales (§ 473 (2)*)—Instruction Excluding Issue of Innocent Purchase of Automobile Held Erroneous.—An automobile was sold and delivered, with title reserved by recorded contract of conditional sale, to be resold by vendee, and was purchased and paid for by defendant. Held, error to instruct that, if jury found that the automobile purchased was the same car mentioned in the contract of sale, they should find for the plaintiffs, as excluding the question of whether or not defendant was an innocent purchaser for value and without notice.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 61.]

Appeal from Law and Chancery Court of City of Norfolk.

Action of detinue by Daniel Rahily and James R. Martin, trading as Rahily & Martin, against W. F. Garrett, for an automobile. From a judgment for plaintiffs, defendant appeals. Reversed and remanded.

A. Johnston Ackiss, of Norfolk, for plaintiff in error.

S. M. Brandt and *Moses Ehrenworth*, both of Norfolk, for defendants in error.

DALEY *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 111.]

1. Criminal Law (§§ 1092 (4), 1144 (17)*)—Bills of Exceptions Must Be Tendered for Signature within 60 Days; Judgment Presumed Correct.—Code 1919, § 6252, is mandatory, and court properly refused

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.